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REPORTS

NOTES OF THE WEEK

Fine on Child

Reading the report of a case in which it was stated that a child aged 10 years was fined £4, we are left speculating about what really happened. The probability seems to be that there was more than one fine, as in respect of a single offence by a child, s. 32 of the Magistrates' Courts Act, 1952, lays down a limit of 40*s.*

Another possibility is that the £4 was made up partly of a sum awarded as damages, as it appears the offence involved some kind of wilful damage. There are some who hold that the 40*s.* limit applies to the aggregate of fine and damages, but *Stone* expresses the opinion that damages may be additional to the maximum fine.

Yet another explanation may be that the court ordered the parent, in accordance with s. 55 of the Children and Young Persons Act, 1933, to pay the fine, and was of opinion that where the parent is to pay, the limit does not apply. We have never shared this view. The fine is imposed on the child, and must be such as the law allows, without reference, in determining the maximum admissible, to the question of enforcement. That is a separate question. If the legislature had intended to make a distinction between the fine that may be imposed on a child when he is to pay and that which may be imposed when the parent is to pay, this would have been clearly indicated in the section. Such a distinction, relating to costs payable in the case of a juvenile, is to be found in s. 6 of the Costs in Criminal Cases Act, 1952.

Family Happiness and Security

An unusual type of conference has been held at Disneyland, California, organized by a large insurance company on the grounds that it is a deep and abiding concern of such a company to enhance the security and thus the happiness of the American family. The conference was attended by independent insurance agents, their wives, children, and in some cases, grandchildren, who, it is reported, took part in discussions with prominent authorities on various aspects of family living designed to outline ways in which insurance can meet the challenge of the future. In a lecture on the future of medicine Dr. Paul Dudley White, physician to President Eisenhower, said life expectancy at birth was approximately 58 in 1920 and is now over 70. It has almost doubled in 100 years. He thought it would rise still more by the year 2000 as by then the conquest of infectious diseases should have been achieved. These include what was once called the "old man's friend" — pneumonia. People rarely die of pneumonia, he said, and, in the case of the old, this could be a pity because some of them survive to be crippled by other causes.

Prison and Reform

With the title *Prison Reform Now*, the Fabian Society has issued a critical and constructive pamphlet in its "Fabian Research Series." As in the *Architects Journal* to which we referred on p. 18, there is here the suggestion that the question of prison buildings has an important bearing on the whole subject of prison reform. The author, Mr. Howard Jones, who is a lecturer in social studies at the University of Leicester, says that in many local prisons the picture is one of large numbers of men crowded together in the grim shadow of antiquated and inconvenient buildings, locked up often three in a cell for many hours out of the 24, and for the rest of the day occupied in unconstructive activity. Though discipline may be even benevolent there is generally an absence of an optimistic rehabilitative attitude on the part of the staff and a corresponding sense of purpose in the institution.

Among the difficulties encountered by the prison authorities are the resistance of trade unions to the extension of trade employment in prison and to the employment of prisoner-trainees in skilled trades after discharge. Moreover there is, says Mr. Howard Jones, strong resistance from both sides of industry to any suggestion that the prisons should be allowed to compete in the general market. That is easily understood, and in times of mass unemployment not difficult to justify, but in any effective reform of the prison system the question of worthwhile employment of prisoners must be tackled, and in our

opinion the present state of employment offers a favourable opportunity for reaching an arrangement with both employers and trade unions. At present work in prisons, apart from training prisons and some central prisons, is stated to be insufficient to keep inmates busy for more than about one-half of a normal working day. A practical suggestion in the pamphlet is the setting up of a standing joint committee between the Commission, the employers and the trade unions, to tackle problems connected with work and vocational training in prison.

Prison Buildings

Turning to prison buildings, Mr. Howard Jones estimates that to rehouse all the inmates of the older prisons would necessitate more than 50 new institutions of the size of Everthorpe Hall. Obviously that cannot be undertaken all at once, but there is urgency in this matter if, as Mr. Jones thinks, more than anything else, prison buildings are responsible for the fact that the prison officer (no matter how his title may have changed) remains a turnkey and a counter of heads, and this spoils the relationship between officers and prisoners. It is recognized that an extensive building programme will be costly and must be spread over some years, but it is emphasized that there should be a definite plan and not just hand to mouth building. Mr. Jones suggests that some early relief could be found by acquiring large country houses, the prices of which would be cheap compared with the cost of providing an equivalent amount of accommodation in new institutions. Very little adaptation would be needed to turn them into medium security institutions. There is the further suggestion that the authorities should think in terms of a large number of small prisons rather than a small number of large ones, so that staff of all kinds should become better acquainted with individual prisoners. In a programme of reconstruction, Mr. Jones suggests, there should be perhaps 12 new prisons of moderate size (say 250 prisoners), together with 30 small scale experimental institutions sited in adapted country mansions, and each accommodating from 40 to 100 prisoners. Meantime, there should be adaptation of existing prisons by the provision of more civilized amenities and a more suitable setting for modern methods of treatment.

The pamphlet also contains some thoughtful and useful proposals about such matters as staff, the after-care of prisoners, and their rehabilitation. Altogether it constitutes a valuable addition to the literature on a subject, the importance of which is being increasingly recognized. Consisting of just over 30 pages it need not occupy a great deal of time in the reading but it provides much material for reflection and discussion.

The Invisible Man

In the December, 1958, number of *Road Safety Notes* issued by the West Riding constabulary there is reproduced, with the permission of the editor of *Ford Times*, an article about the need for pedestrians to wear at night something which makes them visible to drivers at a reasonable distance. It is stated that some years ago, in the United States, seven men were being run down by vehicles at night to every two women so injured and it was thought that the explanation was that trousered legs were less conspicuous in distant headlights than were light-coloured silk stockings. This theory is supported by the fact that it was reported that when the "New Look" appeared in America, with longer skirts and dark nylons, women became more accident-prone at night.

Our own Road Research Board, some six years ago, warned the Ministry of Transport that experiments had shown that with two vehicles approaching one another with dipped headlights the drivers are unlikely to see a pedestrian who is wearing dark clothing until they are 50 to 60 *ft.* from him. It is stated that half the cars on the roads need a minimum of 75 *ft.*, and one car in 10 needs 100 *ft.*, in which to stop from 30 *miles per hour* on a non-skid surface. It is clearly in the pedestrians' interest, therefore, to make himself as conspicuous as possible when he is out on the roads at night to save himself from injury. He also gives drivers a fair chance to see him and to save themselves from causing injury to someone, a thing which no driver wishes to do although some take less care to avoid the risk than they should.

In America and in some other countries clothing is on sale which shows a normal colouring in ordinary light but which glows white and shiny in the headlights of a car. This effect is achieved by there being woven into the material a light weight yarn which contains powdered glass. The result is that the wearer of such a garment is visible to drivers when they are as far away as 1,000 *ft.*

Even if people are not able, or prepared, to buy such garments, it should be possible to wear something light coloured when one is out on the roads at night. Vehicles have to carry lights, and it is not unreasonable that pedestrians should be asked to assist in making themselves visible to drivers so far as it is possible for them to do so. Courts who have to consider the responsibility of drivers for accidents are entitled, we think, to have regard, *inter alia*, to the possibility that a driver was being as careful as he could be but was put into a position more difficult than it need have been because of the admitted difficulty of seeing someone dressed wholly in dark clothes.

Disqualification on Conditional Discharge

The Criminal Justice Act, 1948, s. 7, provides that in the circumstances set out in the section a court before which a person is convicted of an offence may discharge him *subject to the condition that he commits no offence during such period, not exceeding* 12 *months from the date of the order, as may be specified therein*. This is the only condition which may be attached to a conditional discharge under s. 7. Section 12 (2) of the same Act provides that the conviction of an offender who is . . . discharged conditionally shall in any event be disregarded for the purposes of any enactment which imposes any disqualification upon convicted persons or authorizes or requires the imposition of any such disqualification.

Having regard to the provisions of ss. 7 and 12 (2), *supra*, we are puzzled by the decision, reported in *The Times* of January 10, 1959, in a case in which a defendant was convicted at a court of quarter sessions of driving a van whilst under the influence of drink to such an extent as to be incapable of controlling the vehicle properly. He is said to have been given a conditional discharge *and disqualified for driving for* 12 *months*. Furthermore it is stated that a condition of the discharge was that should he successfully apply for restitution of his driving licence after the customary six months he must not drive within six hours of taking alcoholic liquor. We call attention to this matter because "an order for conditional discharge" is the statutory description given in s. 7 (2) of the Act of 1948 when a court exercises this particular power given by s. 7 (1) and it has come to be accepted that when it is stated that a person has been conditionally

discharged the court has proceeded under s. 7 (1). We do not know whether the court, in this instance, purported to act under some other authority and that the use of the words "conditional discharge" has not meant to import the provisions of ss. 7 (1) and 12 (2), *supra*.

Another point which may strike some of our readers is that if the reported condition is a valid one it has the disadvantage that its due observance would be extremely difficult to enforce but this was presumably present to the mind of the court and they must have considered that there was some particular circumstance in the facts of the case which made such a condition worth while.

Attachment of Earnings

The Maintenance Orders Act, 1958, which comes into force on February 16, makes provision for the attachment of earnings and pensions as a means of enforcing payment of sums due under certain maintenance orders. The object is two-fold, to get money from men who are refusing or neglecting to pay, and thereby to relieve the overcrowded prisons of a substantial number of prisoners. How far this object will be attained, only experience of the working of the Act can show, but the object itself is excellent. A man in prison is there at a considerable cost to the community and doing little or nothing to meet the cost. Meantime his dependents are likely to be in receipt of national assistance, at a further cost to the community. It is therefore in the interests, not only of wives and children, but also of society as a whole, that maintenance orders should be complied with rather than that men should go to prison.

Those employers who are required to make deductions from salaries or wages may well find the calculation of amounts somewhat complicated, and the Home Office has prepared a pamphlet as a general guide. The matter is dealt with in the form of questions and answers and is illustrated by diagrams. It can be obtained for 1*s*. from H.M. Stationery Office. It is suggested that should need of further information arise it may be obtained from court officers, the appropriate employers' organization or trade association, or a citizens' advice bureau.

Getting Away With It

Speaking some years ago about juvenile delinquency, we suggested that many offences are committed less with the desire of gain than from bravado where several young people are involved, or a desire to see whether one can "get away with it" where there is an offence by a single person. Robbing an orchard is, we suppose, the typical instance where children are the culprits. In a large town where there are no orchards, the gangs of youngsters try their luck with the street trader or the shop. Nobody supposes that this accounts for every case, but something like it probably accounts not merely for some offences by young people but for some offences by their elders. Smuggling is an everyday example; in the days of rationing others were found in many offences which attracted no general sentiment of disapproval. Fraudulent travelling on public transport is in its effect on the community a similar offence, which is more generally disapproved; the difference is not in the nature of the fraud but in the way in which it is regarded. Many a man who boasts that he has defeated petrol rationing, or worked a fraud upon the Customs, would be ashamed to admit that he had travelled by rail without a ticket. All the same, he may be tempted to do so if he sees the opportunity. It may begin in the spirit of the adventurous schoolboy, but is sure to end by telling lies—which can only be explained by a desire not to be found out. The London newspapers recently recorded the prosecution of the chairman of a well-known company, who was said to be also senior partner of a private banking firm. He was charged with two offences, one being comparatively technical. This was using on the Underground a ticket valid only for the day of issue, which was three days earlier. We have called this technical, because we do not think that the average man would feel a sense of guilt if he had taken a ticket from an automatic machine with the intention of using it later in the day; had been prevented from doing so, and had tendered it without challenge at the barrier next morning.

This was what the banker said that he had done. Unfortunately, he had defaced the ticket by altering the date, thus laying himself open to a second charge. By doing so, he proved against himself that he knew the ticket was no longer valid and that its use was fraudulent. The fraudulent traveller, when detected, is almost bound to tell lies for his own protection. The amateur smuggler necessarily tells a lie at an earlier stage, when he informs the Customs officer that he has not bought anything abroad. As seen by the moralist, it is the lie which is the fundamental evil. So also with a rationing offence, which must involve a falsehood at some point. In the case of the Underground ticket, the defendant said in reply to his own counsel that he was a surtax payer, presumably to show that he was at any rate not in need of 3*d*., though the relevance of this is not clear to the charge of altering the date. It is difficult to see any explanation for stupidity of this sort, except that the offender was, so to speak, making a bet with himself that he could get away with it.

Junior Staff

Local government service, like school teaching and some other employments, has been going through a period of recruiting difficulty. A local correspondent tells us that the town council of Banbury are making special arrangements to inform boys in the local grammar school about the possibility of employment in their offices. A pamphlet is being prepared for distribution at the school, which it is hoped will serve the dual purpose of giving information about the council's work to older boys, most of whom probably will go into other occupations in the town and neighbourhood, and of securing some boys for training by the council. Our correspondent tells us that an articled clerk will be taken every year in the town clerk's office. This seems unlikely since a solicitor is, we believe, precluded from taking more than two articled clerks at a time, but, even if the boys who go from the grammar school to the town clerk's office are not destined to become solicitors, the project is a good one. We believe that large local authorities, who are local education authorities, have for years had similar arrangements with the local schools. Since the days of Edward VI (and probably since those of Orbilius) informal liaison must have existed between municipal and scholastic persons, by which the former found a market for the latter's product; it has also been quite normal for the offspring of officials and councillors to find their way into a council's office. But we do not remember reading previously of organized arrangements in a non-county borough, for putting recruitment from local schools upon a regular footing. There is no reason why a local authority of whatever size should not follow Banbury's example.

Preston Motorway—the First Prosecution

Prosecutions are necessary sometimes not only to deal with those who have committed offences but also, by the publicity given to those proceedings, to warn others not to commit similar offences.

The first person to be prosecuted for an offence on the Preston motorway was a driver who offended against reg. 9 of the Preston By-pass Motorway Traffic Regulations, 1958, which reads as follows: "Subject to the following provisions of these Regulations no vehicle shall be driven or moved or remain at rest on the central reservation." The possible exceptions are dealt with in reg. 14 but none of them was relevant in the case in question. The defendant's excuse for his breach of the regulation was that he wanted to get back as he was on the wrong road. He added that as he was turning on the green his vehicle became stuck in the mud and it cost him £2 to be towed off. It cost him a further £2 to pay the fine imposed by the court. The chief superintendent of police who prosecuted suggested that the court might consider treating the case with some leniency as it was the first of its kind. He added, however, that prosecutions were necessary to focus attention on the dangers which might ensue if the regulations were not obeyed strictly.

The regulations are made under s. 12 of the Special Roads Act, 1949, and s. 12 (4) provides that if any person uses a special road in contravention of the section or of any regulations made thereunder he shall be liable on summary conviction to a fine not exceeding £20 for a first offence and, in the case of a second or subsequent offence, a fine not exceeding £50 or to imprisonment not exceeding three months. It is as well that those who use the motorway should be aware of the penalties that can be imposed for offences against the regulations.

Abolition of Schedule A Tax

The member for Crosby, Mr. R. G. Page, whose advocacy was largely responsible for the Cheques Act, 1957, has lately turned his attention to Schedule A tax. He ascertained from the Financial Secretary to the Treasury (Mr. Simon) that the work on maintenance claims under that schedule had increased six-fold since 1949 and that the increase would have been more if all those entitled to make claims had done so. He then proceeded to suggest to the Financial Secretary that if everybody entitled to make a claim did so it would not be worth while collecting Schedule A, and therefore the present dual system of chargeability to Schedule A and excess rents should be abolished, the whole collection being made in future on rents only.

The member for Barry (Mr. Raymond Gower) suggested that a great stimulus to house ownership would be given if the tax were abated or removed on owner-occupied premises and Mr. Page made another thrust by stating that the tax on owner-occupied business premises was a system of charging tax under one schedule and giving it back under another—a cumbersome procedure and a further argument for doing away with Schedule A.

Mr. Simon was not prepared to go one step beyond the formula answer that this and all other taxes would be kept under review when the Budget is being prepared, and in his replies showed that he had adopted much of the reasoning of the Royal Commission on Taxation.

The Commission were against the abolition of Schedule A and set out their reasons fully in their final report* For example, with regard to Mr. Gower's owner-occupiers, arguments were put to the Commission that notional income is not a fit subject for taxation and that it is inequitable to tax the beneficial enjoyment of a right of occupation of real property when the income which could, by parity of reasoning, be attributed to the owners of other forms of property, *e.g.*, motor cars, goes untaxed. The Commission held that the first argument ignored relative capacities to pay: an owner-occupier with a given income has a larger taxable capacity than a tenant with the same income out of which he must pay rent. They thought the second argument valid as far as it went but pointed out the impracticability of valuing and revaluing chattels and that the impossibility of advancing to that stage did not invalidate the existing charge.

The suggestion to abolish Schedule A on owner-occupied business premises was also rejected, a main reason being that Schedule A income does not qualify for earned income relief and equality is thus preserved with the taxpayer who rents business premises and whose rent payments do not qualify for earned income relief either.

It may be worth reminding some local authorities that the Income Tax Agreed Rules applied to their assessments provide that where an authority is on an interest assessment and likely to remain so tax under Schedules A and B need not be collected. An agreed procedure is set out in the rules. A considerable lessening of work can result if advantage is taken of this concession: it was rather surprising therefore to find when figures were quoted some time ago that over 500 authorities who might have applied the rule had not done so.

Retirement Pension Age

The Phillips Committee, which reported in 1954, considered whether the pension age for women should be the same as for men instead of being five years younger as in the present national insurance scheme. The evidence is that women live longer and it would appear that from a physiological point of view the minimum pension age of 60 for women is probably too low. It was pointed out in the report that there is also the view, based on sex equality, that pension ages for the two sexes should be the same. On the other hand the committee felt bound to recognize that women do in practice retire sooner than men. In their opinion restoration of parity between pension ages for the two sexes might well be justified if it were likely to achieve any considerable saving. But the net saving would be relatively small. On the whole the committee reached the conclusion that the differential should not be removed. In many other countries, on the contrary, the ages are the same for both sexes. But in Australia and Denmark there are lower ages for women.

In this connexion it is interesting to note the views of the Commission on the Status of Women. In its last report to the Economic and Social Council of the United Nations it was recommended that there should be no differentiation between men and women workers with respect to age of retirement and rights to pension; and that retirement age and pension rights should be determined according to rules applicable to men and women alike. This recommendation was based on the acceptance of the principle that women workers should be accorded conditions of work equal to those of men workers. These recommendations were accepted by the council for recommendation to all States Members of the United Nations.

*Cmd. 947, June 4, 1955.

SUCCESSION AND ADOPTION

By DAVID BULMER, *Barrister-at-Law*

General Background

A court which makes an adoption order should advise the adopters to make provision by will for the adopted child. Why is this necessary? Before attempting to answer this question we must consider very briefly the rules relating to the devolution of property upon death.

Some people make wills, others do not. A person in the latter category is said to die "intestate" and his property is distributed amongst certain of his surviving relatives in an order and in the proportions laid down by statute (*see* s. 46 of the Administration of Estates Act, 1925, as amended by the Intestates' Estates Act, 1952). Included amongst these relatives are the "issue" of the deceased and this raises the question of whether an adopted child is entitled to claim as such either through his natural parents or through his adoptive parents. So far as wills are concerned, it is not uncommon to find expressions such as "child" and "children" used in these documents, and again it becomes necessary to consider the rights of an adopted child in relation to a will which contains such expressions.

Under the Adoption of Children Act, 1926

A peculiar feature of English Law is the length of time that it took to introduce "legal" or "statutory" adoption bearing in mind that this artificial device for creating a family unit dates back to the Roman Empire. Be that as it may it was not until 1926 that English Law began to give legal recognition to a relationship which had existed in fact for many centuries, although in a very hazardous form. The delay in introducing this legislation should, perhaps, warn us of the cautious nature of its content. This is particularly true of the provisions in the 1926 Act relating to the devolution of property upon death. Following the recommendations of the Tomlin Committee, the Act provided that "an adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter, and the expressions "child," "children" and "issue," after the making of the adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child": *see* s. 5 (2). In effect, so far as the rules relating to the devolution of property upon death were concerned the *status quo* was preserved. An example will clarify the position. Let us assume that in 1928 Mr. and Mrs. Smith, already having two legitimate children, adopted a third legitimate child, the legitimate daughter of Mr. and Mrs. Jones. If Mr. Smith had died intestate in 1938 the adopted child would have had no claim on his estate. On the other hand, if Mr. Jones had died intestate at the same time the adopted child could have claimed on his estate as his "issue." Assuming next that Mr. Smith had made a will, whether before or after the making of the adoption order, leaving his property to his wife for life and then to his children in equal shares, the adopted child would have had no claim under such a will unless a contrary intention appeared. In contrast, had Mr. Jones made a similar will, the adopted child could have claimed under it, again subject to the appearance of a contrary intention.

The position outlined above continued right up until 1949 by which time it was generally recognized that the provisions as they stood were not in keeping with the accepted aim of adoption, namely the securing of a child's entire integration in the adoptive family (Hurst Report, para. 157). Accordingly, in 1949 an Act, known as the Adoption of Children Act, was passed which, *inter alia*, attempted to reverse the rules as to the devolution of property upon death in relation to adopted persons as they then stood. These provisions were reproduced in the Adoption Act, 1950, and it is to this Act which we now must turn.

Under the Adoption Act, 1950

The relevant provisions are to be found in ss. 13 and 14 of the Act. Broadly speaking, the effect of these sections may be summarized thus:

1. If an adopter dies intestate after January 1, 1950, and after the making of an adoption order (whether made before or after that date) his adopted child can claim on his estate just as if he was a legitimate child of the deceased. Such a child, however, no longer has any claim on the intestacy of his natural parents. By way of example, let us assume that in 1930 Mr. and Mrs. Smith, already having two legitimate children, adopted a third child, the legitimate son of Mr. and Mrs. Jones. In April, 1950, Mr. Smith died intestate. The adopted son would have had equal rights under such intestacy as the two legitimate children. In contrast, had it been Mr. Jones who had died intestate, the adopted child would have had no claim on his estate.

2. In the case of a will any reference to the child or children of the adopter shall, unless a contrary intention appears, be construed as to include his adopted children provided the will was made:

(i) after January 1, 1950,
AND
(ii) after the making of the adoption order.

In contrast, any reference in a will to the child or children of the adopted child's natural parents shall not, unless a contrary intention appears, be construed as including the adopted child.

Two examples will clarify the position.

(*a*) In September, 1950, Mr. and Mrs. Smith, already having two legitimate children, adopted a third child, the legitimate son of Mr. and Mrs. Jones. In February, 1950, Mr. Smith had made a will leaving his property to his wife for life and then to his children equally. In July, 1958, Mr. Smith died without having made any other will. His adopted son would have no claim under the will since it was made BEFORE the making of the adoption order. If, in contrast, Mr. Smith had made a will in similar terms in October, 1950, the adopted child would have had the same rights as Mr. Smith's two legitimate children.

(*b*) In April, 1950, Mr. and Mrs. Smith, already having a legitimate child, adopted a second child. The following day Mr. Smith made a will leaving his property to his wife for life and then to his children equally. In April, 1951, Mr. and Mrs. Smith adopted a third child but Mr. Smith made no alteration in his will. In July, 1958, Mr. Smith died. His legitimate child and the child adopted in 1950 will be able to claim under the will but not the child adopted in 1951.

These examples indicate the need for the court to advise adopting parents to alter their wills.

Report of the Departmental Committee on the Adoption of Children

In 1954 the Hurst Committee published its report, which in paras. 155–160 deals with the problem of inheritance in relation to adopted children. In particular, the committee considered

an adopted child's rights in relation to a will made by his adoptive parents. Whilst accepting the need for the first of the two conditions referred to above., *i.e.*, that the will must have been made after January 1, 1950, it felt that the second condition, *i.e.*, that the will must have been made after the making of the adoption order, was unsatisfactory in that its effect was to exclude persons adopted between the date when the will was made and the testator's death. This, in the committee's opinion, failed to recognize the principle of integration in the adoptive family and could lead to discrimination between children adopted by the same adopter (*see* example (*b*) *supra*). The committee recommended that amending legislation should fix a date and provide that in any will made after that date any reference to the testator's child or children should, unless a contrary intention appeared, be construed to include his adopted child or children irrespective of whether the will was made before or after the making of the adoption order.

Under the Children Act, 1958

The Hurst Committee published its report in September, 1954, and after a substantial period of gestation its labours have borne fruit. The Children Act, 1958, which is to come into force on April 1, 1959 (*see* s. 41 (3)), has a complete part (part II) devoted to amending the Adoption Act, 1950, which goes far towards meeting the recommendations of the Hurst Committee. In s. 22 (1) it is provided that, " For the purposes of subs. (2) of s. 13 of the 1950 Act (which regulates the construction of certain dispositions by settlement or will made after the date of an adoption order so as to include the adopted person in references to children of the adopter, and exclude him from references to children of his natural parents) a disposition made by will or codicil executed or confirmed after the commencement of this Act shall be treated as made on the date of the death of the testator."

The effect of s. 22 (1) will be to prevent an adopted child being barred from claiming under the will of his adoptive parent simply by reason of the fact that he was adopted after the making of the will. On the face of it it will still be necessary for the claimant to show that he was adopted before the making of the will but, in the case of a will made after April 1, 1959, he will always be able to do this by relying on this statutory fiction which artificially postpones the date when the will was made to the time of the testator's death. Once again a legal fiction has been created to circumvent a rule of law which has resulted in hardship.

A final word of warning. The new Act will not affect wills made before it comes into operation, hence it will still be necessary to advise prospective adopters as to the matters we have discussed in this article if cases of hardship are to be avoided.

A HELPFUL DECISION

We have spoken at some length about the evidence given before the Select Committee on Obscene Publications, published last year (H.C. 122 and 123), and have made suggestions on the subject of the Bill introduced in 1956, which appeared in 1958 in a shorter form. We propose in the present article to speak of a judgment delivered by the learned stipendiary magistrate at Huddersfield, in a case under the Obscene Publications Act, 1857. The case related to a large number of magazines, containing pictures of nude or scantily dressed women, which the police had seized on a warrant from two borough magistrates under the Act and asked to have destroyed. There were five shopkeepers involved, and 696 magazines. The learned stipendiary (Mr. Leslie Pugh) took time to examine this mass of material, and has courteously supplied us with a copy of his considered judgment. In a covering letter he modestly suggests that the 696 questions he had to decide were questions of fact : in a sense this is so, but upon this controversial topic the approach to facts by the judge or magistrate can illuminate the law. We respectfully regard the judgment in this Huddersfield case as bringing a breath of common sense into the field of pictorial representation of the human form, comparable with Mr. Justice Stable's judgment in regard to books in *R.* v. *Warburg* (*Martin*) *Secker Ltd.* [1954] 2 All E.R. 683. Before the Select Committee the Director of Public Prosecutions had declared that he would not regard nude photographs as *per se* obscene (question 345), although he went on to qualify the answer. Questions were put to him and other witnesses by members of the Select Committee (some of whom had evidently gathered information on the matter) on the footing that magazines exist dealing specifically with photography of the nude human form—some of these, indeed, are widely sold by high class booksellers and newsagents, and hardly anybody at the present day would object to them. But the Director in his evidence above quoted went on to suggest that this type of photography easily slides into suggestiveness, and the Customs witnesses at p. 60 of H.C. 122 declared outright that any and every photograph of a nude human figure is *per se* obscene, unless (*a*) taken from the back or side; (*b*) taken from such a distance that detail is indistinguishable; (*c*) " touched up " in some way, or (finally) (*d*) photographed from a statue or, presumably, a painting in a picture gallery. In other words, a straightforward photograph of the front of a live model is obscene, but a similar photograph of a dead model (already portrayed in some medium other than photography) is not. And suppose the model was not dead, *i.e.*, he or she has posed for a piece of sculpture which is accepted by the Royal Academy, where photographs of the statue are sold ? True : the Customs witnesses, having committed themselves to this remarkable doctrine, tried (under pressure from the Select Committee) to " hedge " by suggesting, like the Director of Public Prosecutions, that a live model's pose was pretty sure to be " suggestive." Fortunately, perhaps, for the witnesses, they were able to say that few nudist magazines came into their hands—so far as these are produced abroad they are (it is stated) usually sent by post to England, so that the interest of the Customs in nudity is mainly in photographs (not bound) of which a large proportion are smuggled for the admittedly pornographic market.

The learned magistrate at Huddersfield was asked to consider three types of magazine. These he described as first; " those showing studies of women in the nude; secondly those containing photographs of scantily dressed women, and thirdly those containing photographs of women undressing, some of which have a commentary to each picture. One magazine may (and often they do) contain photographs of each of the classes I mention but some, particularly those in the first class, do not." This finding is important, *i.e.*, there was a class which did not depend upon suggestiveness.

" Now (he continued) I am not asked to say whether a picture is in bad taste, nor even whether it is lascivious or even lewd, except where lewdness is obscene—but only

whether it is obscene. There can be nothing obscene about the human body as such, although certain actions are sometimes so whether the body is clothed or not. Clothing is a matter of modesty and not to avoid obscenity. I have thought carefully about the impact on the minds of young people. It would I think be misleading to suggest to young people that nakedness as such is obscene. Fortunately in these days young people are more open and frank. I do not think any of the magazines of the first category can by any standards be said to deprave and corrupt, nor do I think they are of immoral influence.

"The same observations apply to the second category. It may be (I think it is) true that many of these photographs are just puerile and childish, some unbecoming and some crude, but again I do not think they can be said to corrupt and deprave, nor are they immoral.

"Those in the last category have given me most concern. In my opinion one or two seem to me to come very near the borderline of obscenity. They disgust one. They are often vulgar and, to say the least, not edifying but they are not in my opinion obscene within the definition in *R.* v. *Hicklin* (1868) L.R. 3 Q.B. 360; *alias Scott* v. *Wolverhampton Justices* (1868) 32 J.P. 533.

"If I may return to some observations of Mr. Justice Stable, I am not asked to say whether I think it would be a good thing if books like this were never written or published. I am restricted to saying whether I think they are obscene. I say (and as to some with regret) they are not."

We have not had the benefit (*sic*) of seeing the publications described so lucidly by the learned magistrate. In a newspaper account of an early stage of the proceedings, it was stated that the police had seen young people looking at the magazines in a shop window, and that this was one reason for their taking action. It may be that the magazines at which the young of Huddersfield were goggling (to their supposed moral danger) were of the last class; pictures of women undressing, with printed commentary, sound a nasty form of merchandise, which might come near to some possibility of having a corrupting influence—more nearly than any book, however sordid. The learned magistrate felt himself disgusted by their vulgarity—without having seen them, we imagine this would be the effect upon most cultivated persons—but he resisted the temptation to say that on that account they were obscene, just as he had found that photographs of scantily dressed women, though puerile and sometimes crude, were not in themselves obscene.

One can readily understand that photography of this sort can merge into the suggestive, and may lead onward to incontestible indecency, such as was described by the police witnesses before the Select Committee. But we are glad to have had the opportunity of calling the attention of our magisterial and police readers, in particular, to this Huddersfield judgment.

THE TOWN AND COUNTRY PLANNING BILL

PART III. ADMINISTRATIVE PROCEDURES AND RELATED PROCEEDINGS

This part of the Bill clothes with legal effect a number of the recommendations of the Franks Committee (on Administrative Tribunals and Inquiries).

Clause 24 provides greater scope for proceedings challenging the validity of certain orders and decisions. The orders concerned are set out in subcl. (2) of the clause and include:

1. Any order under s. 21 of the 1947 Act (concerning revocation or modification of planning permission).

2. Any order under s. 26 of the 1947 Act (concerning orders requiring discontinuance of a use of land or imposing conditions on continuance).

3. Any order under s. 28 of the 1947 Act (concerning tree and woodland preservation).

4. Any order under s. 29 of the 1947 Act (concerning preservation of buildings of special architectural or historic interest).

5. Any order under s. 31 (4) of the 1947 Act (concerning the definition of areas of special control for advertisements).

The decisions of the Minister to which the improved rights of appeal are designed to apply are set out in cl. 24 (3) and include (*inter alia*):

1. Any decision of the Minister on an application for planning permission referred to him under s. 15 of the 1947 Act.

2. Any decision of the Minister on an appeal under s. 16 of the 1947 Act concerning appeals against the planning decisions of local authorities.

A person aggrieved may within six weeks from the date of the order or the decision make an application to the High Court. The powers of that Court in such an event include:

(*a*) The making of an interim order suspending the operation of the contested order or action (subcl. (4) (*a*)).

(*b*) The quashing of an order or action which it is satisfied is *ultra vires* the Acts of 1947 or 1954 or this Bill or where the court considers that "the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements" (as defined in subcl. (10)).

Subclause (6) provides that subject to the preceding provisions of the clause the validity of an order or of any Ministerial action under the clause shall not be questioned in any legal proceedings whatsoever and subcl. (7) precludes anything in the clause affecting "the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Minister" to take action covered by the clause. The High Court's interim powers do not apply in the case of orders or decisions relating to the preservation of trees and woodlands or of buildings of special architectural or historic interest. In such cases irreparable harm might be done whilst the preservation order was in suspense (proviso to cl. 24 (4)).

Clause 25 is designed to carry out the recommendation of the Franks Committee that "an appeal should lie to the courts on a point of law against a determination by the Minister as to what constitutes development." It will be remembered that the Minister's decision under s. 17 of the

1947 Act involved his deciding a final point of law (except in enforcement proceedings), *i.e.*, as to what constitutes "development" or requires planning permission (cl. 25 (2) (*a*) and (*b*)).

Clause 26 carries into effect another recommendation of the Franks Committee and enables a section to be inserted in the Tribunals and Inquiries Act, 1958, which empowers the Lord Chancellor, after consulting the Council on Tribunals to make statutory rules of procedure for "statutory inquiries" (as defined in that Act) held by or on behalf of a Minister.

Clause 27 removes the statutory restriction (about the hearing of counsel and of expert witnesses at inquiries as to compulsory purchase of land by parish councils) contained in s. 168 (5) of the Local Government Act, 1933. This follows the general line of criticism by the Franks Committee.

Clause 28 deals with the situation about "purchase notices" under s. 19 of the Act of 1947. It will be recalled that these notices are ones served on local authorities by owners following a refusal of development permission, whereby owners may require their land to be bought by the local authority because in its existing state and with the current planning permission (if any) it is incapable of "reasonably beneficial use . . ."

Subclause (1) of this clause enables a purchase notice served by an owner to be accepted without recourse to the Minister thereby saving a considerable amount of administrative work. The effect of the subclause is to amend s. 19 of the 1947 Act so that the council on whom a purchase notice is served must within three months serve a counter-notice on the owner stating one of three things:

(*a*) that the council are willing to comply with the purchase notice, or

(*b*) that another local authority specified in the notice have agreed to comply with it in their place, or

(*c*) that for specified reasons the council are not willing to comply with the purchase notice and have not found any other local authority who will agree to comply with it in their place and that they have transmitted a copy of the purchase notice to the Minister on a specified date together with a statement of the specified reasons.

Where a council have served a notice under (*a*) or (*b*), *supra*, the council or other specified local authority "shall be deemed to be authorized to acquire the interest of the owner compulsorily" under part IV of the Act and to have served a notice to treat on the date they served a counter-notice on the owner. Subclause (2) of the clause gives the server of a purchase notice a *statutory* right to a hearing by the Minister in the event of the latter not proposing to confirm the notice. (Previously such a hearing was purely a matter of *ex-gratia* administration). The remaining subclauses are designed to remedy various defects in the procedure for considering purchase notices, particularly in relation to the expanded rights of appeal to the courts established by cl. 24 of the Bill.

Clause 29 deals with the publication of notice of applications for planning permission. Under it planning applications (of certain classes to be designated by development order) must be advertised locally (cl. 29 (1) (*a*)). Any representations about them which are received within 21 days must then be considered by the local planning authority before deciding them (cl. 29 (1) (*b*)). The Explanatory Memorandum says that the purpose of this clause is to give effect to the intention of the Ministers in prescribing "certain very limited types of development which might be considered bad neighbours by public opinion in the locality . . ."

Clause 30 extends the rights of owners when application is made for planning permission. Subclause (1) of this clause provides that a planning application must be accompanied by one of three kinds of certificate, *viz.*:

(*a*) that the applicant is the sole owner of the property concerned, or

(*b*) that he has notified all the owners, or

(*c*) that he has advertised the application in the local press with or without a personal notification to some of the owners.

Where an agricultural tenant is concerned, *personal* notification must in any event be given to him, since the giving of planning permission in respect of his land may deprive him of the security of tenure which he enjoys under the Agricultural Holdings Act, 1948 (proviso to subcl. (1)). The local planning authority must consider any representations made within 21 days of compliance with the clause and inform those who have made representations of their decision (subcl. (2) (*a*), (*b*), (*c*)). Similar machinery will apply to appeals under s. 16 of the 1947 Act and to cases called in for the Minister's decision under s. 15 of that Act (subcl. (3) (*a*) (*b*)).

Subclause (4) provides a penalty not exceeding £50 for false certificates and subcl. (6) defines "owner" as meaning all those with an interest in the land of not less than three years and also the tenant of an agricultural holding under the Agricultural Holdings Act, 1948.

ADDITIONS TO COMMISSIONS

HAMPSHIRE COUNTY

Kenneth James Priestley Barraclough, Elgin, Fitzroy Road, Fleet.
Ronald Frank Cleverley, 2 Woodley Court, Woodley, nr. Romsey.
Gilbert Philip Dicker, High Street, Odiham.
Miss Rachel Mooring Aldridge, Millhams Meads, Christchurch.
George Noble, Canterton Cottage, Brook, nr. Lyndhurst.
Mrs. Marie Pool, Marks, Ewshott, Farnham, Surrey.
Anthony Hugh Thomas, Stanbridge Earls, Romsey.
Major The Hon. William Nicholas Somers Laurence Hyde Villiers, Heckfield Heath House, Heckfield.

LEICESTER COUNTY

Harry Blackett, Coalfield Farm, Heather.
Denis Joseph Cowen, East Farndon Hall, Market Harborough.
Miss Edna May Deacon, Rose Lea, Spring Lane, Shepshed.
Mrs. Dora Rachel Hamylton, 2 Westfield Road, Leicester.
Anthony Robert Payne, The Rectory, Burrough-on-the-Hill, Melton Mowbray.
John Alfred Toller Rowlett, Redroofs, Stoughton Lane, Evington, Leicester.
Frederick John Jackson, 27 Charnwood Drive, Leicester Forest East.
James Arthur McHugh, Carlton House, Midland Road, Ellistown.
Mrs. Dora Esme Sargant, 18 Una Avenue, Braunstone, Leicester.
Leonard Victor Smith, The Rookery, Broom Leys Avenue, Coalville.

STAFFORD BOROUGH

Mrs. Margeth Alice Lingwood, M.B., 19 Wolverhampton Road, Stafford.
Philip Victor Shaw, 14 Milford Road, Walton, Stafford.
Mrs. Florence Olive Simmonds, 290 Sandon Road, Stafford.
Mrs. Emily Marion Williams, 2 Flat, Pennycroft House, Lammascote Road, Stafford.
Cleave Edward Woolcock, 28 Rowley Bank, Stafford.

GOVERNMENT CONTROL OVER LOCAL AUTHORITIES

"It is understandable that anyone who is responsible for some activity should try to keep his finger on the detail of it, but this temptation should be resisted." So said the Manpower Committee in 1951, when considering the principles which should determine the relationships between central and local government. The fundamental principle enunciated by the committtee was that as much as possible of the detailed management of a scheme or service should be left to the local authority, departmental control being exercised at key points only.

The devoted members of the committee divided into numerous sub-committees and all aspects of the central-local relationship were examined with great care and in great detail. As a result a number of administrative controls were relaxed or abolished, although some departments were much more stubborn in resisting change than others. On a number of previous occasions we have mentioned these diehards and particularised some of their unnecessary activities: we cannot accept the official view that differences in services must give rise to differences in departmental control of the order prevailing in these cases, but must reluctantly ascribe it to the operation of Parkinson's law against a background of departmental anarchy. In the words of the professor:— "Work expands so as to fill the time available for its completion."

The change made as a result of the Manpower Committee recommendations were not, however, fundamental: they dealt largely with procedural detail and the kind of expenditure admissible for grant.

No one would probably now dispute that control of broad policy should remain with the central government. This is clear, but while Whitehall may say that administration should largely be left to local authorities there has been no agreement about the amount of local independence which should be conceded. The new General Grant is to usher in a new era and Mr. Brooke has constantly promised greater freedom to the local authorities as a result of its introduction: the aim is the wholly admirable one of fostering and stimulating a vigorous and independent local government. When the form of the grant was being discussed the local authority associations pressed for a definition of freedom against this new background, pointing out that the recommendations of the Manpower Committee (even had they been applied, which in many instances they had not) were now outmoded and did not reach the heart of the problem. The associations asked for an extensive removal and reduction of statutory and administrative controls, even going so far as to say that if the promised "great increase of responsibility" did not measure up to their expectations the proposed general grant might well prove unacceptable on that score alone.

As a result the Government agreed to initiate another review of controls, which is now under way. We presume that procedure will follow broadly that of the Manpower Committee, that is to say, the main body will endeavour to lay down principles leaving to sub-committees their application to individual departments. Two improvements of the 1951 deliberations are needed: first policy matters to be reserved to the government should be clearly defined and any departmental attempt to graft on detailed administrative controls should be firmly resisted, secondly non-co-operative departments must be brought to heel.

The field of capital investment illustrates how improvements can be made. It will doubtless be accepted that under present conditions the Government must be able to decide the total investment in local capital works, which constitute such a large part of total spending in the public sector of the economy. It is reasonable also that the government should be the body responsible for allocating the total sum between the various services, and also, if it should prove necessary, for allocating the sum allotted to a particular service between individual authorities. All this could be done from capital programmes submitted by local authorities.

It may be urged by the departments that they will require in addition detailed particulars of each capital scheme. We believe this to be unnecessary, at least in the great many cases where general standards and cost limits have been laid down. It also follows that government departments should no longer concern themselves with the acceptance of tenders or the conditions of contracts entered into by local authorities, and that the detailed examination by the professional staff of departments of work already done by the professional staff of local authorities in such matters as the preparation of plans, specifications and bills of quantities should cease.

In a revised system of this sort loan sanctions have no part: agreement as to the information submitted on and arising out of capital programmes can make them superfluous.

A simplified and streamlined system is thus possible once it is accepted that local authorities have officers capable of designing and erecting buildings efficient for their purpose, of pleasant elevation and economical in cost. Up to the present it appears that Whitehall has not believed this to be true.

Linked with capital expenditure is loan-raising. We hope that this important field will be explored because here local authorities are getting the worst of two worlds. They are pushed on to the open market to seek their loans but are hampered in their efforts to make reasonable bargains because of the over-riding influence of the frequently too-high P.W.L.B. rates of interest. They are thus treated much worse than the nationalized industries whose capital is raised for them by the Government.

Important representations were also made by the local authorities in connexion with land transactions which are now subject to numerous restrictions, not based on logical principle, and of doubtful utility. These representations, we believe, will largely be successful and it is probable that acquisition of land by agreement, appropriation of land, and disposal by sale, exchange or lease (subject to certain exceptions), will not in future require departmental consent. It is also probable that the present detailed control over the application of capital proceeds of sales and detailed instructions as to adjustment of accounts on sale or appropriation will cease. The local authorities have urged also that while they are willing to consider the advice of the district valuer they should not be compelled to accept it. They point out that even at present the district valuer has no right to intervene where no loan or specific grant is involved by a purchase, but that where borrowing or grant does enter the field local authorities are subject to meticulous and detailed control. As an example, if they wish to lease land for more than seven years and the proposed rent exceeds 10*s.* a week

they must get the district valuer's opinion and are bound to act upon it!

If it is really intended to give greater freedom the departments must alter their outlook radically. At present too many of them do not really accept the independence of local authorities as a fact or believe that they can be trusted to carry out work without meticulous supervision: in their view the local authorities are merely subordinates of Whitehall and to be treated as such, be it ever so politely. The duplication of work caused by this attitude is enormous and wasteful.

On the other hand Mr. Brooke, we believe honestly and sincerely, has said that local authorities must be given much greater independence, and this is the expressed Government view. The results of the discussions now proceeding will thus show who really governs in London.

MISCELLANEOUS INFORMATION

WAR DAMAGE PAYMENTS IN 1958

The War Damage Commission paid out £19¾ million during 1958 compared with £23¼ million in 1957 and £25 million in 1956. The average weekly rate of payments in the last quarter of 1958 was £355,000.

The Commission paid 6,998 "cost of works" claims for repairs during the year, and made 3,100 payments on account or as instalments. The amount involved was £16¾ million of which nearly £2 million was for the repair and rebuilding of houses. Other principal items were: commercial buildings, £3¾ million; factories, £2¼ million; churches, £3¾ million; shops, £2 million.

The average amount of each claim paid during 1958 was £2,390 compared with £1,930 in 1957 and £1,520 in 1956.

Value payments amounted to £3 million, of which £317,000 related to houses.

Total war damage payments made by the Commission now amount to £1,242¼ million in 4,723,500 separate payments. Contributions by property owners during and after the war amounted to nearly £200 million.

1951 CENSUS, ENGLAND AND WALES, GENERAL REPORT

A final review by the General Register Office of the 1951 Census was published on December 30, under the title "Census 1951, England and Wales, General Report." It includes a full commentary on such figures of national population, and of the distributions by age, marital condition, birthplace, nationality, occupation and industry, as have already been published without any analytical report, and summaries of the other reports published separately. As is customary, the volume provides a description of the planning and organization of the census enumeration and subsequent production of reports. A special section of the report which discusses the quality of response will be of considerable interest to students and to all engaged in operations of a census character.

Nearly 50,000 enumerators were employed to take the census under the supervision of some 1,200 census officers, most of whom were the local registrars of births and deaths. The subsequent analysis and publication was carried out by a staff at the maximum of 500. The total cost of the operation was £1½ million, representing a little less than 8½*d.* for each person enumerated. The report provides a critical appraisal of past difficulties and draws some lessons for the future.

Comparison of the enumerated population with independent estimates suggests that the enumeration was complete, at least to within a fraction of one *per cent.* of the population. For most of the questions the proportion of persons who failed to provide an answer was very small. Where possible, some independent checks of the accuracy of the information were made. For example, comparison of a sample of the statements of age with the birth entries for the same persons showed that about 95 *per cent.* of these statements were exactly correct, and most of the others were only one year wrong. About one half of these errors were a result of anticipation of closely approaching birthdays and the remainder were mainly of a random character. For some of the more complex questions, such as occupation, there is a less close agreement between the census information and other data.

It was decided to investigate possible sources of error in occupation statements and to determine the differences that existed between descriptions of occupation of the same person at registration of deaths and in the census. This is relevant not only to the interpretation of the census results but to the study of occupational mortality carried out by the General Register Office. A sample was taken of death registrations relating to persons dying shortly after the census, and the discrepancies between the occupational statements in these registrations and the census records for the same persons were studied. The results indicate a large variability in descriptions of the same job as given by the worker himself at the census and by other informants (*e.g.*, the widow) at death registration, which suggests the need for avoiding over-refinement in occupational classification. At the same time it is not enough seriously to impair the validity of the occupational mortality investigation.

One of the innovations of the 1951 census was the production of a range of census tabulations at an early date based on a one *per cent.* sample of the census schedules. Since these tabulations were later repeated for almost the whole of the data it was possible to examine the accuracy of the sample tables and to compare the range of observed sampling errors with that which might be expected on theoretical grounds. It was found that the sampling technique used to avoid bias was successful and, in general, the sample tables could be regarded as having an order of reliability within theoretical expectations. That is, the comparison proved that the sample results accurately anticipated the latter analysis of the complete data so that the advancement in time was gained without any serious loss of precision. On this basis the innovation was fully justified.

An attempt has been made in the report to make a more accurate assessment of urban development than can be obtained from tabulations based on administrative areas. Nearly three-quarters of the population of the whole country was urbanized according to the criteria used. There were more people living on non-urbanized land in urban administrative areas (4·4 million) than on urbanized land in rural administrative areas (600,000). In the country as a whole more than one half of the urbanized population lives in seven very large clusters; the distribution of these and smaller clusters is depicted on a map.

In the full commentary on the industry and occupation tables there is much of current as well as historical interest. Changes in the age structure of occupations provide pointers to more recent recruitment and retirement trends. Occupations where numbers have been expanding, *e.g.*, electrical engineering, show a young age structure; the reverse is true of occupations which are less popular or less in demand, *e.g.*, textile workers. There were some significant changes between 1931 and 1951—men in scientific occupations were increased in number more than threefold; there were large increases in the numbers of most engineering occupations; the driver of the horse-drawn van virtually disappeared; female clerks and typists more than doubled their numbers; the number of women indoor servants was halved.

Comparison with world population figures underlines the relative stability of the population of England and Wales where, in contrast to the less developed areas of the world, there is no problem of mounting population pressure.

ROAD CASUALTIES — NOVEMBER, 1958

During November of last year, 537 people were killed on the roads of Great Britain and 5,918 seriously injured. In addition, 18,564 were slightly injured, making a total for all casualties of 25,019.

Compared with November, 1957, these figures show a decrease of four in deaths; an increase of 281 in the seriously injured and an increase of 1,227 in the slightly injured.

The net increase of 1,504, or 6½ *per cent.*, compares with an increase in traffic on main roads (as estimated by the Road Research Laboratory) of 10 *per cent.*

November casualty figures brought the total for the first 11 months of the year to 270,800, or 22,457 more than in the same period of 1957. Deaths numbered 5,274, an increase of 383, and the seriously injured, 62,086, an increase of 4,541.

THE WEEK IN PARLIAMENT

By J. W. Murray, our Lobby Correspondent

FLICK-KNIVES BILL

Mr. Barnett Janner (Leicester, North West) has introduced a Bill under the Ten Minute Rule to amend the law in relation to the making and disposing of flick-knives and other dangerous weapons.

He said in the Commons that it was now about four years since he first raised the subject. An increasing number of murders and stabbings with flick-knives and similar weapons had taken place since then, and he had frequently endeavoured to rouse the Home Office out of its complacency, unfortunately, without success. The dangerous situation created in consequence of the inaction by the Home Secretary in that respect had been frequently commented upon by Judges, magistrates, social workers and others.

He reminded the Home Secretary that the Association of Municipal Corporations, which had a comprehensive membership, had recently requested him to introduce legislation similar to that which prevailed in the State of New York, in the United States. A similar request had come from the Women's Group of Public Welfare and Standing Conferences of Women's Organizations, which consisted of representatives from 46 national women's organizations and other voluntary organizations with a large women's membership.

He had just returned from the United States, where he made some inquiries about the legislation which prevailed in the State of New York. According to the American authorities it was effective, and most of the fears which had been expressed in the replies to Questions given in the Commons with regard to the ineffectiveness of those measures because of the use of those instruments by tradesmen were very much exaggerated. Indeed, the American legislation read as follows: "a person who offers, sells, loans, leases or gives to any person any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, hereinafter referred to as a switchblade knife; a person who offers, sells, loans, leases or gives to any person any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever, or other device, hereinafter referred to as a gravity knife; . . . is guilty of a misdemeanour." The question whether certain trades had to use those shocking instruments for certain purposes had been investigated by the American authorities, and at one time the legislation incorporated a provision exempting people who used the knives for trade purposes. But it had been found that that provision was not necessary and it had been removed. He thought that the only way in which a person could now own one of those weapons was by being specifically licensed to do so. He was also told that shops had now stopped exhibiting those weapons, and that only those who were prepared to have proceedings taken against them still retained them.

There was no opposition and Mr. Janner formally presented his Bill, supported by Mr. D. Chapman, Mr. Sydney Irving, Mr. R. E. Prentice, Mr. D. W. Wade, Mr. Eric Johnson, Mr. George Jeger, Mr. Marcus Lipton and Miss Joan Vickers.

The Bill is due for Second Reading on Friday, February 20.

STREET OFFENCES BILL

Two amendments have been tabled for the rejection of the Second Reading of the Street Offences Bill. The first, in the names of Mr. R. T. Paget, Mr. Kenneth Robinson and Mr. Sydney Silverman, is a straight motion for its rejection.

The second, in the names of Mrs. Lena Jeger, Mrs. Eirene White and more than 50 other M.P.s, urges the House "while recognizing the need to deal effectively and justly with the problem of prostitution and other street offences, to decline to give a Second Reading to a Bill which retains the term "common prostitute," abolishes the need to provide annoyance, fails to provide for any system of caution, or to deal with the problem of soliciting by men, gives excessive powers to police officers; and which, relying exclusively on increased penalties, contains no constructive proposals for dissuasion or redemption."

NOW TURN TO PAGE 1

Summary trial of an offence of common assault can only follow upon the laying of an information by, or an behalf of, the party aggrieved. (Offences against the Person Act, 1861, s. 42.)

PERSONALIA

APPOINTMENTS

Mr. Lawrence Henderson, clerk to St. Neots, Hunts., urban district council since July, 1947, is to take up a new appointment as clerk and chief financial officer to Berkhampstead, Herts., rural district council, on March 2, next. Mr. Henderson, who is chairman of the East Anglian branch of the Society of Clerks of Urban District Councils, went to St. Neots from Strood, Kent, where he was deputy clerk and accountant to the rural district council.

Mr. Francis Cyril Hoyle, A.I.M.T.A., has been appointed borough treasurer of Castleford, Yorks., to succeed Mr. J. W. Bromley, A.S.A.A., A.I.M.T.A., who died on October 17, last. Mr. Hoyle's career started at Colne Valley urban district council. He also served with Ashton-under-Lyne borough corporation and Wakefield city corporation, before he was appointed as deputy borough treasurer with Castleford corporation in 1956.

OBITUARY

Sir Cecil Oakes, C.B.E., D.L., for 23 years clerk to East Suffolk county council, has died at the age of 74. Sir Cecil was recognized as one of the leading authorities on local government law. He began his long and distinguished career in 1919, when he was appointed deputy clerk to East Suffolk county council, following war service with the Cheshire Regiment. In 1924 he was appointed clerk to the council and clerk of the peace, retiring from those positions in 1947. During his long service with the council, Sir Cecil served on a number of Government committees: the Chelmsford committee on local government and public health law consolidation in 1930; the departmental committee on highway law consolidation in 1937; in the following year the Roche committee on justices' clerks (it was in 1938 that he was awarded the C.B.E. for public services); the departmental committee on electoral law reform in 1941. During the last war Sir Cecil served as county controller for civil defence for East Suffolk, from 1941 to the end of the war. In 1943 he was created Knight Bachelor.

Sir Cecil's long association with East Suffolk local government and judicial circles did not end with his retirement from the clerkship in 1947. He was immediately elected to the East Suffolk county council, and became their representative on the County Councils Association. In the same year he became a justice of the peace for Suffolk and two years later was appointed chairman of Suffolk quarter sessions (Eastern and Western divisions). In 1957 he was appointed to both divisions as deputy chairman, following the decision to appoint a paid chairman of quarter sessions. In the following year he was gazetted deputy lieutenant of Suffolk and was appointed chairman of both East Suffolk and West Suffolk magistrates' courts committees.

Sir Cecil was editor of *Wright and Hobhouse on Local Government and Local Taxation* and was associated as co-editor of later editions.

Mr. William McCulley, clerk to the justices for St. Helens, Lancs., since September, 1939, has died at the age of 53. Mr. McCulley began his career as a clerk in the town clerk's department and was later appointed assistant clerk to the justices, under Mr. T. A. Turton, under whom he served his articles. Mr. McCulley had lectured in a number of towns on magisterial law in practice.

Mr. C. T. Sandland, formerly deputy chief constable of Wallasey, Cheshire, has died at the age of 61.

NOTICES

The next quarterly meeting of the Lawyers' Christian Fellowship will be held at the Law Society's Hall, Bell Yard, W.C.2, on Tuesday, February 3, 1959, at 6.30 *p.m.* Tea will be available from 5.30 *p.m.* The meeting to which all lawyers, law students and visitors are warmly welcomed, will be addressed by the Reverend Bruce Reed on the subject of "Christian Teamwork."

SOLICITORS' ARTICLED CLERK'S SOCIETY

Activities for February

Tuesday, 3: Debate at the Law Society's Hall. Refreshments at 6 *p.m.* until 6.30 *p.m.* Subject will be announced. Adjourn at 8.30 *p.m.* for coffee or stronger refreshment.

Tuesday, 17: Play Reading at the Law Society. Refreshments at 6 *p.m.*–6.30 *p.m.* An enjoyable evening is always had at our play readings, so come along and join in. Adjourn at 8.30 *p.m.* for—well you ought to know by now!

REVIEWS

The Probation Service. Edited on behalf of the National Association of Probation Officers. By Joan F. S. King, B.A. London: Butterworth & Co. (Publishers) Ltd., 88 Kingsway, W.C.2. Price 25s. net. Postage 1s. 3d. extra.

A book such as this has been long overdue, and N.A.P.O. is to be congratulated on the way in which it has been produced. It represents the experiences and opinions of quite a number of contributors, all experts in some particular aspect of probation and kindred work and the somewhat difficult task of editorship has been well carried out by Miss King. It is not intended to be in any sense a textbook, but it will prove invaluable, not only to probation officers new to the work, but also to those others who like to know what are the views and experiences that have been collected and which are placed before them without any trace of dogmatism, but rather as food for thought and discussion.

The book begins with a history of the origin and development of the probation system, and goes on to show how it is organized today, what are the many and varied duties of probation officers, how they are trained and how they do their work.

Society, it is observed, makes provision by social legislation for those who cannot manage their own affairs, and a probation system is one aspect of society's concern to help some of such people. As every probation officer knows, he has a duty to advise, assist and befriend the probationer. Just how to do this is not so simple as it sounds, and there is much thoughtful and helpful discussion about it. The probation officer is a case worker, as are many others engaged in carrying out social service and it is pointed out that case work is based on the belief in the intrinsic value of each human being and on his capacity for growth and change; to him each case is unique. Naturally, there is much in this book about case-work methods, and psychology is constantly in mind. "With much in common in the way of knowledge and experience the psychotherapist and case-worker work at different levels of therapeutic skill, each meeting the needs of his particular clients."

There is some interesting discussion on the Criminal Justice Act, 1948, which includes the statement that the fears of many probation officers that naming a division instead of a probation officer in a probation order, might weaken the link between probation officer and probationer have proved groundless. That is satisfactory to know. A comment about present day conditions that is pleasant to read is that post-war conditions with their full employment and comprehensive social services have relieved the probation officer to a great extent of the necessity of dealing directly with the material needs of his clients and encouraged the tendency to focus case work upon the individual as a person together with his emotional difficulties and personal relationships.

There are useful chapters on after-care and matrimonial conciliation. In connexion with the matrimonial work in particular the importance of maintaining a confidential relationship is emphasized.

We hope that although this book will appeal most obviously to probation officers and magistrates, it will be widely read by the general public. The public is becoming interested in the probation service and deserves to be well-informed.

Potter's Outlines of English Legal History. By A. K. R. Kiralfy. London: Sweet & Maxwell, Ltd. Price 25s. net.

This is the fifth edition of a students' book, prepared by way of introduction to the late Professor Potter's *Historical Introduction to English Law*, a more solid work which, in its fourth edition, by Mr. Kiralfy, we had the pleasure of reviewing earlier this year.

Mr. Kiralfy is reader in law at King's College, London, and is well qualified to produce a comparatively elementary book of this kind, for the law student or history student. He rightly explains (at some length) in his introduction the practical nature of the work-a-day English legal system, which has been built up by the courts when deciding actual disputes between real people. Even when Parliament has altered the law, or created new legal rules, it has been necessary for the courts to interpret these and, by the long settled custom of this country, this interpretation is not regarded as variable from case to case but takes its place as part of the law, layer by layer upon its legislative foundation.

It is necessary for the student to understand this process of the the growth of law, and from the introduction he is in this book led onward to a general sketch of legal development. Thence he comes to the force of English history and, by way of explanation of the different courts, to the history of particular legal topics, which occupy broadly half the book. There are very helpful footnotes, some referring to Professor Potter's larger book and some to other publications, or giving interesting side lights upon legal history.

While we do not forget that this is avowedly a student's book, and that the publishers have been rightly anxious to keep its cost within bounds, we should have liked to see a better apparatus of references to case law, where some reports are cited without dates, and almost all the cases are only given a reference to one report. We have also, on first reading, gained the impression (to adapt Dr. Johnson) that the Whig Dogs have been given the best of it, in the learned author's account of old tribunals, which in course of years have lost their power. Here again, however, we admit the difficulty of preserving an aloof impartiality, in speaking to students about these once politically bitter controversies. Bearing in mind that this is avowedly a students' book, and that the student should as he advances in knowledge be trained to correct any prejudice which it instils into his mind, we think the work could be confidently recommended to those who are concerned with legal tuition.

The Lawyer's Remembrancer and Pocket Book, 1959. By J. W. Whitlock assisted by S. H. W. Partridge. London: Butterworth & Co. (Publishers) Ltd. Price 15s. net.

This annual publication continues to offer to the legal profession an extraordinary amount of information within the compass of a pocket book. At the end there is a diary for 1959, with enough space given to each day for noting all the engagements of a busy life. The main portion of the book comprises the sort of information which may be required at any moment, ranging from lists of the Judges, with the county court circuits and the addresses of the local committees under the Legal Aid and Advice Acts, to stamp duties and copious information about trade marks. We mention these merely by way of example. There is full information on all sorts of practical matters concerning magistrates' courts, income tax, legal costs, and death duties. It must be admitted that the compression of all this information into a pocket book has involved the use of exceedingly small print and thin paper which, taken together, make it rather hard to read. Against this, however, it is fair to say that the information for which the lawyer will look in his pocket book is not that which he wishes to study for an hour at a time, and that the learned editors have given references to textbooks where the respective subjects can be studied more conveniently. Whether one wants a table of weights and measures or a list of current law reports; the rules about appeals, or a brief note on the Rent Restriction Acts, one can with confidence take this book from one's pocket and be sure that it will give the answer or tell its owner where to find the answer.

Housing Law and Practice. By A. Norman Schofield and John F. Garner. London: Shaw & Sons Ltd. Price £6 6s.

The first edition of this work appeared in 1951, and by the time the second appeared in 1955 it had established itself as one of the textbooks kept in regular use in local government offices. This new, third, edition has been made necessary by the consolidation of the law of housing in two major statutes: the Housing Act, 1957, and the Housing (Financial Provisions) Act, 1958. There are some small outstanding enactments, but these will be of diminishing importance, and for some time to come the private practitioner and the local government official who have to do with housing will be mainly concerned with the law which is to be found in the Acts just mentioned. The present work annotates these statutes, and includes a comparative table of sections showing where to find the legislative provisions which have been familiar since the last consolidation in 1936. Apart from the two main statutes the chief change to be noticed in the shape of the law is the production of the Housing (Prescribed Forms) Regulations, 1957, which take the place of corresponding regulations made in 1937. Other sets of regulations and statutory rules and orders or statutory instruments taking effect under the Act of 1936, have been continued in force by the new Acts and are to be found in the present volume, although it may be that gradually these in their turn will be superseded or consolidated.

The plan of the work is to give the reader a narrative account of the present housing law, before coming to the Acts themselves. This narrative covers 430 pages, so that it is in itself a complete treatise on its subject: it has been entirely re-written so as to bring it into line with the latest statutes and case law. It falls naturally into three main parts: unfit and unsuitable housing; the provision of housing accommodation; and practice relating to housing management and tenancies. Under each of these main headings the learned authors have explained the effect of the relevant Acts and decided cases, in a series of chapters which are themselves divided into sections each dealing with some particular topic. This arrangement should be helpful in practice, avoiding the need to dodge about from one enactment to another, in order to discover what the law is on each of the separate matters dealt with. After these three parts (of the narrative portion of the book), there is a brief collection of miscellaneous topics such as the effect of the Rent Acts upon the housing duties of councils, and notes upon subsidence and town development. All that we have said so far relates to the preliminary, or narrative, portion of the work. This is followed by the annotated statutes beginning with the Small Tenements Recovery Act, 1838, with notes on each bringing it into relation with the housing powers of local authorities.

Although the two consolidating Acts of this year and last year have picked up so much of the earlier legislation, there are more than 20 outstanding statutes in this field, although most of them comprise no more than certain surviving sections which it was not convenient to include in the consolidation. Such as they are, however, they cover about 150 pages of the work, so that it will be convenient to have them in the same volume as the major Acts. The notes upon the two major statutes are brief, for the reason that the narrative portion of the work has already explained their principal provisions, but these notes do give all necessary cross-references both to the narrative portion and to other statutes, as well as decisions of the courts. Circulars, orders, and regulations relating to housing run out to another 650 pages or thereabouts—again it will be a convenience to those concerned to have this matter in the same volume as the Acts, thus forming, as it were, an encyclopaedia of the whole subject.

The book is attractively got up, and well printed with clear type and good margins, and we can foresee a substantial period of continued usefulness, unless indeed some political upheaval leads to major recasting of the law.

Notes on District Registry Practice and Procedure. By Thomas S. Humphreys. London: The Solicitors' Law Stationery Society, Ltd. Price 15s. net.

This is the eleventh edition of a book which first appeared in 1921. Since the tenth edition was published there have been fresh rules of the Supreme Court, particularly affecting the scale of fixed costs in district registries. The work falls into a series of paragraphs, each dealing with some particular aspect of practice in the district registry of the High Court, and contains, where necessary, appropriate cross references to the *Annual Practice*. The text comprises less than 100 pages, but it is the sort of little book which will be in constant use by the practising solicitor and his managing clerk.

THE BEST PEOPLE

The New Year has opened, trailing clouds of glory as it comes—in the shape of the Honours List. This voluminous document must contain, for those interested, as many surprises as a child's Christmas-stocking. Brown, who hoped he might get a C.B.E., and confidently expected an O.B.E. at least, is fobbed off with a mere Membership of the Order; Smith, who modestly looked forward to the possibility of a K.C.B., finds his name in the exalted ranks of the G.C.Bs. Robinson, who (by contributing generously to party funds) thought he might have earned a baronetcy, has to be content with the status of a Knight Bachelor; while Jones, who has been working quietly and self-effacingly at his duties in the colonial police, is pleasantly surprised to find himself the recipient of a B.E.M. Snooks, who served faithfully for many years in the House of Commons, loyally obeying the Party Whip, but muffed a recent bye-election, is "kicked upstairs" as Baron Snooks of Oswaldswhistle, and is so overcome with emotion at this change in the colour of his blood from common red to aristocratic blue that he finds the greatest difficulty in following the grave and reverend signors of the College of Heralds as they devise the quarterings, and the field of *argent* or *gules*, which he and his descendants will bear for ever as Peers of the United Kingdom.

The Fountain of Honours is still the Crown; but constitutional propriety requires that in the distribution of the *largesse* of dignities and titles the Monarch shall accept the advice of her Ministers and high officers of state. Gone are the days when the Royal Prerogative could be exercised by the caprice of the reigning Sovereign, to reward some worthless favourite or to advance some ambitious politician whose subservience commended him to the royal favour. Past, too, are the times when the honour of knighthood was reserved for one who had performed some outstanding deed of chivalry, and the dignity of an earldom or a viscounty was conferred only upon a man who enjoyed nobility of birth. Under our topsy-turvy system the Peerage is being continually reinforced by infusions of new blood; and admission to or advancement in the House of Lords may be granted as readily to an eminent surgeon, lawyer, soldier, banker, newspaper-proprietor, or trade union official as to a rich landed proprietor or elder statesman. More than one good House of Commons man has been known to decline the honour, preferring to face the hurly-burly of general elections and the rough-and-tumble of an active political life rather than to sit serenely on the red leather benches of the Upper House, where debates are sparsely attended and, in place of noisy divisions, "the motion for papers is, by leave, withdrawn." Many another finds, in the bestowal of a coronet, the fulfilment of his fondest hopes.

The evolution of our democratic constitution leads to incongruities of many kinds. At the one extreme, there may be the miners' leader or former shopboy who feels it necessary to his newly-acquired dignity to cultivate a manner and a mode of speech which (he thinks) are better suited to the august assembly he now adorns than the plebeian ways and homely Doric of his youth. At the other extreme, one may find the popular demagogue from the "intellectual" wing of his party, doing his level best to live down a regrettable Eton-and-Balliol accent, and even practising the dropping of initial *hs* in speeches or broadcasts when he desires to "put over" his viewpoint to the lower orders of society. Neither spectacle is particularly edifying, and neither is peculiar to the modern way of life. Thucydides relates how, in the fifth century, B.C., the Athenian Assembly was dominated by the rough eloquence of Kleon, the Tanner, an astute politician who emphasized the gruffness and rudeness of his mode of address in order to curry favour with the populace; in a flash of humour, rare in so impersonal a historian, Thucydides tells how, eventually, he overdid things to such an extent that the Assembly, after listening to his loud-voiced and vulgar criticisms of the conduct of the colonial war by the gentle and aristocratic Nikias, appointed Kleon as commander-in-chief in his stead, fervently hoping that either he would bring the war to a speedy and successful conclusion or (an equally desirable result) that he would get himself killed in action and cease to trouble their debates.

At about the same period, in early Republican Rome, the overweening arrogance of the Patricians led to a near-revolution, which secured for the Plebs (the common people) a number of privileges that became their most cherished institutions. In eighteenth-century France the licentious and oppressive conduct of the old nobility turned, after 1789, into the inverted snobbery of the Girondins, the Jacobins, and (eventually) the Sans-Culottes—the ragged rabble among whom poverty and lack of breeding was accounted a political virtue. A similar swing of the pendulum was observable, in the previous century, in England, when the proud absolutism of James and Charles I gave place to the equally insufferable despotism of Oliver Cromwell and his son Richard.

In the England of the Napoleonic wars the tyranny of Bute and the Tories, and the authoritarian rule of the Pitts, was opposed by a faction led by William Blake, whose visionary mysticism and poetic talent were overlaid by a certain uncouthness of manner in his writing of poems and pamphlets. In the early nineteenth century Jane Austen's quiet irony (none the less acid for its urbane style) satirizes the idle life of the country gentleman—nowhere better than in the opening passage of *Persuasion*:

> "Sir Walter Elliot, of Kellynch Hall, in Somersetshire, was a man who, for his own amusement, never took up any book but the Baronetage; there he found occupation for an idle hour, and consolation in a distressed one; there his faculties were roused into admiration and respect by contemplating the limited remnant of the earliest patents; there any unwelcome sensations arising from domestic affairs changed naturally into pity and contempt as he turned over the almost endless creations of the last century; and there, if every other leaf were powerless, he could read his own history with an interest which never failed."

In the 1920s, when the Labour Party rose to be a power in the land, the acknowledged leader of the aristocracy was well described in the epigram:

> "I am George Nathaniël, Marquess Curzon;
> I am a most superior person."

And, in our own day, it is noteworthy that the protagonist for the Upper Class, in the U and Non-U controversy, is a self-conscious writer whose grandfather was raised to the Peerage as recently as 1902.

We conclude with an illustrative anecdote. At a public function, attended by a number of foreign guests, a high-born English personage found himself seated next to an urbane and cultivated visitor from China. The former was getting rather above himself, and boasted of his noble ancestry, asserting loudly that he could trace his descent back to the fourteenth century. In reply to this observation the Chinese, turning a celestial smile upon his neighbour, inquired blandly: "The fourteenth century! Before or after Christ?"

A.L.P.

SHORTER NOTICES

Housing Statistics, 1957–58

This report, published by the Institute of Municipal Treasurers and Accountants contains various statistical information relating to the vast majority of housing authorities in England and Wales. The report has been greatly extended, so that it now consists of returns from 1,223 authorities compared with 519 in the previous edition. The report also contains brief details of rent rebate schemes. It is priced 10*s*. 6*d*., and is available from the Institute.

Industry in South Lancashire

The Lancashire and Merseyside Industrial Development Association consists of representatives from Lancashire local authorities and chambers of commerce, trade unions, etc., which was formed in 1931. The dependence of south Lancashire upon coal and cotton has been greatly lessened in recent years, and this most attractively printed booklet is designed with the object of introducing new industry to the area, and of showing what is already in existence.

Flats and Houses, 1958

Design and Economy. This booklet is priced at 10*s*., and is published by the Ministry of Housing and Local Government. It gives a number of suggestions (based upon practical experience) concerning the erection of high density housing, layout, etc. It is a book which will probably be regarded as being too technical for the average housing committee: for all that, it is one which could be read with great profit by all housing committees.

Castleford

The borough of Castleford received its charter of incorporation only in 1955; its official guide, however, is a very mature publication, as well as being a very comprehensive one.

Power for the Future

The Electricity Council have published this booklet describing the historic growth in the demand for electricity and the manner in which the demand has been met, with various other aspects of electricity supply and demand. Since 1920, sales have expanded twentyfold, and the growth continues: it is interesting to see, for example, that 5,000,000–6,000,000 kilowatts are planned to be provided for by 1966 in the revised nuclear power programme—or almost as much as the total pre-war requirements.

Hetton

This small urban district council publish fairly regularly, a news-letter upon which we have commented previously: in current edition, emphasis is placed upon the history of the winning of a local colliery in 1820, fairly fully illustrated, which makes fascinating reading—in addition to the inclusion of more contemporary matters.

Wye River Board

The annual report of this river board includes statistical details given in a most business-like manner; month by month, river by river; it also includes coloured graphs. The rivers in the board's area are not, generally speaking, subject to much pollution—on the subject of fisheries, it is stated that in the estuary, the fishing was nothing remarkable, but above average for the last 10 years.

Solicitors' Diary for 1959

This diary, published by Waterlow & Sons, Ltd., is now in its 115th year of publication. As usual, it is a compendium of useful knowledge. It contains, as usual, the customary lists of London and country solicitors, and among the other valuable features is to be found sections of addresses in everyday professional use, and a particularly useful section on stamp duties.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Courts for Adolescents. By Hermann Mannheim. I.S.T.D., price 1*s*. 6*d*.

Practical Guide to Industrial Derating. By A. D. Nicholls and R. E. Lake. Rating and Valuation Association. Price 30*s*. 6*d*.

Poisons. By Vincent J. Brooks and Morris B. Jacobs. London: D. Van Nostrand Co., Ltd. Price 49*s*.

A Modern Approach to Marriage Counselling. By W. L. Herbert and F. V. Jarvis. Methuen. Price 10*s*. 6*d*.

Local Government Forms and Precedents. Second Cumulative Supplement. Butterworth & Co. (Publishers) Ltd. Price 27*s*. 6*d*. Combined price £23 2*s*.

The Motor Guide to the Law. Anonymous (by a barrister). Temple Press, Ltd. Price 10*s*. 6*d*. net.

Road Traffic Offences. By G. S. Wilkinson.

We are asked to state that a limited reprint of this second edition is available, at 30*s*. net. Also that a Noter-up will be bound in with this edition, and will be sent free to purchasers of this edition who forward a stamped addressed envelope. The Solicitors' Law Stationery Society Ltd., are the publishers.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Payment of lump sum—Enforcement of order.*

I have had a complaint from the clerk of the justices of another court in respect of arrears of maintenance due under a bastardy order made in 1947 whereby the defendant was ordered to pay 15*s.* per week for the maintenance of the complainant's child.

It appears that after the order was made an agreement was made between the complainant and the defendant whereby the defendant agreed to pay a lump sum of £250 to the complainant in settlement of the weekly payment under the order.

The arrears due to date under the order are £368 8*s.* 6*d.* and I observe that in the case of *Griffith* v. *Evans* (1882) 46 L.T. 417, in which an order had been obtained by the respondent for the support of her bastard child, it was held by the Queen's Bench Division that the agreement was no bar to the jurisdiction of the justices to enforce the order on the application of the mother.

I shall be glad to have your opinion as to whether the justices are obliged to make an order for enforcement of the arrears and weekly payment due under the order, or whether they have in the circumstances a discretion to refuse to enforce the order if they deem fit.

GULAM.

Answer.

Griffith v. *Evans, supra,* held that such an agreement was no bar to the mother's application to have the order enforced. To that extent, we think the justices must enforce the order but they have a discretion in the matter of the arrears. It is not stated when the agreement was made, but it appears from the figures that the arrears arose during a period when the father paid nothing by virtue of the agreement. We think that the justices, when dealing with the arrears, are entitled to take into account any sum paid under the agreement.

2.—Housing Act, 1949—*Improvement grant—Husband and wife.*

The council received an application from A for an improvement grant in respect of works to premises expressed to be vested in him, and they also received a letter from his solicitors confirming his ownership. The council accordingly issued to A a notice approving the application and specifying the terms and conditions upon which the grant would be made. Payment of the grant is now due, and upon a request for verification of ownership A's solicitors state that they have made a mistake, and that the premises are vested in Mr. and Mrs. A jointly.

It appears obvious that, in the circumstances, payment of the grant must be made to Mr. and Mrs. A but would you please advise:

(*a*) Whether you agree as to the mode of payment.

(*b*) Whether you consider that the council are likely to be prejudiced in making such payment in that Mrs. A might be regarded as not bound by the conditions of the grant.

(*c*) Generally?

P. TITUS.

Answer.

(*a*) No; *see* next paragraph.

(*b*) The applicant was not the proper applicant and there is no way of binding the applicant's wife.

(*c*) All we can say is that we think the grant is not payable.

3.—Landlord and Tenant—*Rent Act,* 1957—*Certificate of disrepair—Overpaid rent.*

On July 6, 1957, a tenant received a notice of increase of rent, providing for an increase as from October 7, 1957, of 6*s.* 6*d.* per week on the existing rent of 18*s.* per week, following which, on August 31, 1957, the tenant served on the landlord a notice of defects of repair on form G. On September 4, 1957, the landlord gave an undertaking on form H to remedy defects specified in the tenant's notice of defects of repair. All the defects were not remedied on March 5, 1958, as undertaken, and therefore as provided in paras. 7 and 8 of part II of sch. 1 to the Act, a certificate of disrepair was deemed to be in force as from that date. The tenant was then in a position to get back the increase of 6*s.* 6*d.* by weekly deductions from the old rent of 18*s.* per week until all the increase that had been paid had been recovered (unless in the meantime the landlord had complied with his undertaking). If the tenant had then taken advantage of this position all the increase would by now have been recovered. Unfortunately the tenant has paid the increase to date, although the landlord has still not complied with his undertaking, and has only now inquired about making the deduction.

1. Can all the money paid in excess of 18*s.* per week since October 7, 1957, be recovered in accordance with s. 14 (1) of the 1920 Act; s. 8 (2) of the 1923 Act; s. 7 (6) of the 1938 Act; and para. 1, sch. 6 to the 1957 Act?

2. If not, can the excess paid since March 5, 1958, be so recovered and the remainder by weekly deductions of 6*s.* 6*d.* as would have been the case if the tenant had taken the action available to her on March 5, 1958?

BUCKLE.

Answer.

We think the first course is open to her.

4.—Licensing—*Club—Admission of members of other clubs.*

The answer to P.P. 6 at 122 J.P.N. 775, is, I suggest, not a complete answer to the question.

While it is true that the Licensing Act, 1953, does not impose any restriction controlling the admission of temporary and honorary members other than that relating to the return to the clerk of the justices showing the rules of the club as to such members, neither does it contain any provision that the supply of intoxicating liquor to a member of a registered club in return for a money payment is not a sale by a person not holding a justices' licence (s. 120, Licensing Act, 1953).

The legality of such a supply depends on such cases as *Graff* v. *Evans* (1882) 46 J.P. 262, which was based on the view that the person supplied was himself a co-owner of the liquor and that the transaction was a transfer of a special property in the goods to one of the co-owners.

It appears to me that the test as to whether a temporary or honorary member can lawfully be supplied with intoxicating liquor depends on whether he can be considered as a co-owner with the other members of the club of the liquor belonging to the club. It is surely arguable that where, for example, a member of a club belonging to a federation of clubs is permitted merely by signing a book to enter another club belonging to the same federation and purchase, or to use neutral words, obtain liquor in return for money, he cannot be considered by virtue of that transient connexion with the second club to have become a "co-owner" of the liquor. Such a supply is probably in accordance with the rules of a very great number of clubs in this country but, I suggest, may nevertheless be illegal.

OCCORA.

Answer.

In our answer to P.P. 6 at 122 J.P.N. 775, we did not seek to make the law relating to registered clubs appear to be either logical or tidy: we have read with interest our correspondent's letter, but we adhere to our previous answer to the question then asked.

Graff v. *Evans* (1882), *supra,* which preceded by 20 years the first statute law relating to registered clubs, did not distinguish between various species of members when it decided that a transaction whereby intoxicating liquor passes from the club to one of its members is not a "sale" within the meaning of the Licensing Acts: therefore, in our opinion, the decision applies to every member, of whatever species, if the rules confer upon him the benefits of membership. That temporary and honorary members may be among the membership of a registered club is implicit in s. 143 (2) (*e*) (i) of the Licensing Act, 1953: experience of the operation of the law affecting registered clubs makes it possible for us without strain to accept the proposition that such members are "co-owners with the other members of the club of the liquor belonging to the club."

5.—Magistrates—*Jurisdiction and powers—Limitation of time—Summons not served—Death of issuing justice—No further summons possible after expiry of time limit—No power to amend return date of first summons.*

A verbal information was laid before a justice of the peace for an offence under the Road Traffic Act, 1930, committed by X and a summons was signed and issued by that justice. A return

date was inserted in the summons. The police were not able to trace the alleged offender until some 15 months after the date of the original offence and the summons has, in fact, not been served. The justice who signed the summons has died and the question arises whether the alleged offender can be brought before the court. The facts seem to be distinguishable from the case of *Dixon* v. *Wells* (1890) 54 J.P. 725 in that in that case the summons originally was bad. On the present facts the summons was perfectly valid and would have been effective had the police been able to effect normal service. It appears that if a fresh information has to be laid no proceedings can be taken because of the lapse of time.

The point on which your opinion is requested is whether the returnable date in the original summons could be amended in order to bring the alleged offender before the court and, if so, who could authorize the amendment of the date.

It appears that an offender may be able to avoid having to answer a charge if he is fortunate enough to conceal his whereabouts from the police until after the expiration of six months, and the magistrate taking the information and issuing the summons has died. J.T.C.

Answer.

The first summons was exhausted when the return date came and the summons was marked "not served." The return date cannot be amended thereafter.

No other summons can be issued (except as provided in affiliation cases by s. 51 (3) of the Magistrates' Courts Act, 1952) by any other justice (*see R.* v. *Pickford* (1861) 25 J.P. 549).

To prevent a defendant from securing immunity by disappearing for the time being the prosecution, when the summons is reported "not served," can apply immediately on the return date for a warrant. They will, presumably, be in time then to lay a fresh information if the original justice is not available, and a warrant will remain in force until it is executed, no matter how long the defendant delays his return.

6—Magistrates—*Practice and procedure—Suspended committal orders made—Defendant later files petition in bankruptcy—Can commitments issue—Bankruptcy Act*, 1914, *s.* 7 (1).

A was convicted of three offences of using a motor vehicle without an excise licence, contrary to s. 15, Vehicles (Excise) Act, 1949, and fines totalling £30 were imposed. On July 1, 1958, he was brought before the court on an inquiry as to means warrant and a committal order of one month in respect of each offence was made, suspended so long as A paid 5*s.* per week in reduction of the fines.

A filed his petition and a receiving order in bankruptcy was made on August 1, 1958, and the debtor has included the outstanding fines amongst his unsecured creditors. A proof of debt has been received from the official receiver but at the moment no steps have been taken to prove in the bankruptcy. The debtor, A, made two payments prior to the receiving order but has since made no payment.

1. Can a warrant now issue for A's imprisonment in view of s. 7 (1) of the Bankruptcy Act, 1914 ?

2. Does an order of discharge free the bankrupt from his liability to imprisonment in default of payment ? FELOS.

Answer.

1. We do not think the defendant's subsequent bankruptcy precludes the issue of warrants of commitment. The cases decided on the comparable section of the Bankruptcy Act, 1883, emphasize the punitive nature of the proceedings, *i.e.*, the imprisonment is regarded not as a method of collecting a debt but as an alternative punishment for the original offence. In addition, another argument can be put forward, based on s. 151 of the 1914 Act. In the case of a fine, the Crown is the creditor (*re Pascoe* [1944] Ch. 310) and that section binds the Crown in respect of remedies against the property of the debtor but says nothing about remedies against his person. We should add, perhaps, that if the court decides to prove in the bankruptcy the commitments should not be issued.

2. The decisions in *Bancroft* v. *Mitchell*, L.R. 2 Q.B. 549 and *ex parte Gravels*, L.R. 3 Ch. 642, support the proposition that discharge does not free the bankrupt from his liability to imprisonment in default of payment. This, we would suggest, follows from the proposition that the imprisonment is an alternative punishment for the original offence.

7.—Real Property—*Trees in unmade streets.*

My council operating under s. 150 of the Public Health Act, 1875, have over the last 10 years been making up a number of unmade streets. In some of these streets the developers or frontagers had planted trees. There is divergence of opinion among frontagers as to whether they want trees in their streets when they are made up. At one time my council made provision for the planting of trees in the specification, by leaving squares at the edge of the footpath where these could be planted.

Experience has shown that not all the frontagers take advantage of this, and where no tree is planted in the space provided, the space is unsightly and a danger. Accordingly, my council later decided that no provision would be made in the specification for the provision of trees, except where at least 60 *per cent.* of the frontagers asked for it, and were prepared to put down sufficient money to cover the cost of planting, which was to be carried out by the council. In one street, which is in the course of being made up, the frontagers have taken matters into their own hands, and without consultation with the council have dug holes in the tarmac of the footpath, and placed trees therein.

Could you please advise:

(*a*) Where trees are found to exist in unmade streets, are the council entitled to remove these, and not to replace them when making up the street ?

(*b*) If the answer to (*a*) is no, could the council remove them after adoption ?

(*c*) Where the frontagers have dug up the tarmac of the street in course of construction:

(i) Can the council remove these trees before adoption, or only after adoption ?

(ii) Can the frontagers who can be proved to have done damage to the tarmac of the footpath be sued either civilly in tort, or criminally under s. 14 of the Criminal Justice Act, 1914, and, if so, at the instance of the council or of the council's contractors whose work has been damaged ?

(iii) Can the cost of making good the damage be added to the total cost of the street works for the purpose of the apportionment ?

The difficulties which occur to me are that s. 64 of the Highway Act, 1835, does not appear to apply because of the limitation contained in s. 63. As the street is still a private street for which the frontagers will have to pay eventually, it appears that they are entitled to put the trees in, and it might be argued that the damage they have done is damage to their own property. I feel it might be possible for the council to refuse to adopt the street because the trees have been put in contrary to the specification, but from a practical point of view this would not be advisable where the frontagers will be paying the apportionments over 10 years. D.W.O.L.

Answer.

(*a*) The trees in the private street belong to the owner of the soil, and the highway through that street has been dedicated subject to their existence. The local authority can in our opinion remove them, without replacement, if this is necessary to execution of the work of paving, etc., to their satisfaction in the particular street. We doubt whether as part of the works under s. 150 of the Act of 1875 they can properly do so in pursuance of a general policy, *e.g.*, because they do not like the type of tree, without considering what is necessary in the particular street.

(*b*) It is commonly assumed in practice that they have a right to do so for the purposes named in s. 149 of the Act of 1875. In theory pre-existing trees still vest in the owner of the subsoil, but we discussed the implications of this at 112 J.P.N. 198 and concluded that in various circumstances the council were entitled to remove even pre-existing trees: *cp. Stillwell* v. *New Windsor Corporation* (1932) 101 L.J. Ch. 342.

(*c*) Strictly, perhaps only after adoption. The highway has not been dedicated subject to the existence of the tree, but until the highway has vested in the local authority the owner of the soil is entitled to alter it, so long as he does not reduce the benefit already conferred upon the public by dedication of the highway. If he has reduced that benefit there may be other proceedings, but apparently not summary abatement by the council. In the present case, however, we see no real objection to their removing the trees at once, so that work under s. 150 can be completed.

(ii) We agree that s. 64 of the Highway Act, 1835, does not apply, but s. 14 of the Act of 1914 seems to apply because undoubtedly there has been damage, injury, or spoil to or upon real or personal property. It was unlawful, inasmuch as the council by their contractors were authorized by statute to lay tarmac, and the cases relating to the word "malicious" show that the damage was done maliciously. We see no difficulty about a civil remedy at the suit of the contractors, who are in lawful possession of the site, and have not yet parted with property in the materials.

(iii) No, in our opinion.